

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

RANDY BURZYNSKI,

Plaintiff,

v.

THE AMERICAN COAL COMPANY,

Defendant.

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Case No.05-CV-4165

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter comes before the Court on Plaintiff's Motion to Dismiss his complaint (Doc. 9). Defendant also filed a Motion to Dismiss or in the alternative Motion for Summary Judgment (Doc. 4). In Plaintiff's Motion to Dismiss, Plaintiff acknowledged that he entered into a General Release with Defendant and that such Release precludes him from proceeding further with this case. Plaintiff prays that this Court dismiss this case, however, he failed to specify whether his prayer was for dismissal with or without prejudice. The Court is aware that a plaintiff may have his case dismissed without a court order if a plaintiff files a notice of dismissal before a defendant answers or moves for summary judgment. *See* FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1). The Court does not construe Plaintiff's Motion as a notice of dismissal because Defendant filed for summary judgment before Plaintiff filed his Motion. In light of Plaintiff's acknowledgment that the General Release precludes further action in this case, this Court **GRANTS** Plaintiff's Motion. Plaintiff's claims are therefore **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated: September 27, 2005.

/s/ J. Phil Gilbert

**J. PHIL GILBERT
U.S. District Judge**